IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1301 of 2003

to

FIRST APPEAL No 1304 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SPL.LAQ OFFICER

Versus

LEGAL HEIRS OF DECD. SHANTILAL KASHIBHAI PATEL

Appearance:

Mr.A.Y.Kogje, learned A.G.P. for Petitioner No. 1-3

..... for Respondent No. 1-1/1

MR KM SHETH for Respondent No. 1/2-1/5

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 29/07/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

Admitted. Mr.K.M.Sheth learned advocate waives service of notice on behalf of the claimant/claimants in each appeal.

Having regard to the facts of the case as well as in view of the request made by the learned advocates of the parties, the appeals are taken up for final disposal today.

2. By filing instant appeals under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure, 1908 the appellants have challenged legality of judgment and award dated July 30, 2001 rendered by the learned 6th Joint civil Judge (S.D.), Vadodara in Land Reference Case nos. 569 of 1992 to 591 of 1992 by which the appellants have been directed to pay additional amount of compensation at the rate of Rs.1725.00 per Are, i.e. Rs.17.25 ps. per sq.mtr. for irrigated lands and Rs.1150.00 per Are i.e. Rs.11.50 per sq.mtr. for non-irrigated lands in addition to offer of compensation made by the Special Land Acquisition Officer at the rate of Rs.2.25 ps. per sq.mtr. for irrigated lands and Rs.1.50 ps. per sq.mtr. for non-irrigated lands.

3. The Executive Engineer, Narmada Division No. 1/2 Vadodara, had proposed to the State Government to acquire agricultural lands of village Abhol, Taluka Padra, District Vadodara for the purpose of construction of Jambusar Branch, under Narmada Canals Project. On scrutiny of the proposal, the State Government was satisfied that agricultural and non-agricultural lands of village Abhol were likely to be needed for the said public purpose. Accordingly, notification under Section 4(1) of the Land Acquisition Act, 1894 ("the Act" for short) was issued which was published in the official gazette on January 25, 1989. The land owners were served with notices under Section 4 of the Act and they had filed objections against the proposed acquisition. After considering their objections, the Special Land Acquisition Officer, Narmada Project, Unit No. 5, Chhani, Vadodara had forwarded his report to the State Government as contemplated by Section 5A(2) of the Act. That report was considered by the State Government and the State Government was satisfied that the lands, which

were specified in the notification issued under Section 4(1) of the Act, were needed for public purpose of construction of Jambusar Branch under Narmada Canals Project. Therefore, declaration under Section 6 of the Act was made which was also published in the official gazette. Interested persons were, thereafter, served with the notices under Section 9 of the Act for determination of the compensation. Having regard to the material placed before him, the Special Land Acquisition Officer offered compensation at the rate of Rs. 2.25 ps. per sq.mtr. for irrigated lands and Rs.1.50 ps. per sq.mtr. for non-irrigated lands. the claimants were dissatisfied with the offer and they did not accept the award. They filed application under Section 18 of the Act, and required the Special Land Acquisition Officer to refer the matters to the Court for the purpose of determination of adequate compensation. Accordingly, the References were made to the District court, Vadodara which were numbered as Land Reference Case nos. 569 of 1992 to 591 of 1992.

4. In the reference applications, it was pleaded by the claimants that having regard to market value of adjacent lands and fertility of the lands acquired, they were entitled to compensation at the rate of Rs.22.50ps. per sq.mtr. for irrigated lands and Rs.17.50ps. per sq.mtr. for non-irrigated lands. The reference applications were contested by the present appellants vide their written-statement. In the reply, it was averred that compensation awarded by the Special Land Acquisition Officer was just and proper in view of fertility of the lands, crops raised thereon as well as income therefrom and, therefore, the reference applications should be dismissed. In view of rival assertions made by the parties, necessary issues for determination were framed by the Reference Court.

5. On behalf of the claimants, Mr.Jayantibhai Mangalbhai Patel was examined at Exh, 18 whereas on behalf of the appellants, Smt.Ashaben Rajubhai Shah, who was Special Land Acquisition Officer at the relevant time, was examined at exh. 26, and Mr.Brijnandan Mangatram Rami, who was Executive Engineer at the relevant time, was examined on behalf of the acquiring body at exh. 32. It may be stated that the witness of the claimants had asserted in his deposition that for the public purpose of Jambusar Branch under Narmada Canals project, lands from village Kanzat were acquired, and that in Land Reference Case nos. 229/1998 to 257/1998 and 279/1998, the Reference Court had awarded compensation at the rate of Rs.8.85 ps. per sq.mtr. by

judgment and award dated August 12, 1998 and not only that there was common boundary of village Kanzat and village Abhol, but the lands which were acquired from village Kanzat were in all respects similar to the lands of village Abhol, which were acquired subsequently. The previous award of the Reference Court was produced by him at exh. 19. It was also claimed by him that the price of non-irrigated lands of village Abhol was more than that prevailing in village Kanzat. Further, he had also produced documents showing different crops which were being raised on irrigated lands acquired. Though the witness examined on behalf of the claimants was searchingly cross-examined, nothing could be brought on record to show that earlier award produced by him was not relevant. On the basis of earlier award produced at exh. 19, the Reference Court has directed the appellants to pay an additional compensation of Rs.1725.00 per Are for irrigated lands and Rs.1150.00 per Are for non-irrigated lands by judgment and award dated July 30, 2001, giving rise to instant appeals.

6. Mr.A.Y.Kogje, learned A.G.P. appearing for the appellants, submitted that earlier award rendered by the Reference Court in respect of lands of village Kanzat was not relevant at all for the purpose of ascertaining market value of the lands acquired in the present cases and, therefore, the impugned award should be set aside. According to the learned counsel of the appellants, the claimants having failed to establish that the lands which were acquired from village Kanzat were similar in all respects to the lands acquired from village Abhol, the Reference Court should not have placed reliance on the previous award for the purpose of determining the market value of the lands acquired from village Abhol. The learned counsel emphasized that determination of the compensation by the Reference Court is erroneous and, therefore, instant appeals should be accepted.

7. Mr.K.M.Sheth learned counsel of the claimants, contended that the evidence of Mr.J.M.Patel, examined on behalf of the claimants, establishes that the lands which were acquired from village Kanzat were similar in all respects to the lands acquired from village Abhol and, therefore, no error was committed by the Reference Court in placing reliance on the previous award of the Reference Court which was confirmed by the High Court. The learned counsel referred to the deposition of the witness examined on behalf of the acquiring authority, and pointed out that it was admitted by the witness examined by the appellants that the boundary of village Kanzat and village Abhol was common. Based on this

evidence, it was argued that the Reference Court did not commit any error in placing reliance on the previous award for determining the market value of the lands acquired from village Abhol, more particularly when it was established by the claimants that the lands earlier acquired from village Kanzat were similar in all respects to the lands acquired from village Abhol. The learned counsel pleaded that there is no substance in the appeals and, therefore, the same should be dismissed.

8. We have been taken through relevant evidence by the learned counsels of the parties. So far as earlier award rendered by the Reference Court in respect of village Kanzat is concerned, we notice that non-irrigated lands of village Kanzat were acquired for the purpose of construction of canal under Narmada Canals Project. Therein notification issued under Section 4(1) of the Act was published on August 4, 1984 and the Land Acquisition Office had awarded Rs.0.85 ps. per sq.mtr. as compensation for non-irrigated lands. The Reference Court by judgment and award dated August 12, 1998 awarded compensation at the rate of Rs.8.85 ps. per sq.mtr. for non-irrigated lands. The claim of the witness examined on behalf of the claimants that non-irrigated lands of village Abhol were better in quality than non-irrigated lands of village Kanzat , could not be demonstrated to be wrong. The evidence on record and, more particularly, evidence of the witness examined on behalf of the appellants would show that boundary of two villages is common. It is well settled that an earlier award of Reference Court or High Court in respect of similar or adjacent lands and which has become final between the parties, can be taken into consideration for the purpose of ascertaining market value of the lands acquired subsequently from a nearby village. It is relevant to notice that as mentioned earlier, notification under Section 4(1) of the act was published on August 9, 1984 for acquiring lands of village Kanzat for this very purpose whereas in instant cases, notification under Section 4(1) of the Act was issued on January 25, 1989 and having regard to time lag, the Reference Court was justified in giving benefit of reasonable rise in price of lands which were acquired from village Abhol. It may be stated that the previous award produced by the claimants at exh. 19 has become final in as much as the same was confirmed in Civil Application Nos. 9368 to 9397 of 1999 and in First Appeal nos. 3391 to 3420 of 1999 by the learned Single Judge of this Court vide judgment dated February 28, 2000. The previous award of Reference Court related to non-irrigated lands on the basis of which market value of non-irrigated lands of

village Abhol is determined. The determination of market value of non-irrigated lands of village Abhol at the rate of Rs.1300.00 per Are, arrived at by the Reference Court on the basis of price of non-irrigated lands of village Kanzat which were acquired for this very purpose, is not shown to be erroneous. On the contrary, the learned A.G.P. has stated at the Bar that the determination of the market value of non-irrigated lands of village Abhol on the basis of price of non-irrigated lands of village Kanzat is proper. However, it was pointed out that after determining market value of non-irrigated lands of village Abhol at the rate of Rs.1300.00 per Are, the Reference Court has committed an error in holding that the claimants who were owners of irrigated lands are entitled to get 1.5 times more value of their lands than the amount awarded for non-irrigated lands. According to the learned counsel of the State Government, the Reference Court has determined the market value of irrigated lands at the rate of Rs.1950.00 per Are by giving rise of Rs.650.00 per Are which is about 50% over the determined market value of non-irrigated lands, and this being contrary to principles laid down in Kantaben Manibhai Amin & Another V/s Special Land Acquisition officer, Baroda AIR 1990 SC 103, the market value of irrigated lands should be determined by giving rise of 25% over the market value of non-irrigated lands.

9. Mr.K.M.Sheth learned advocate of the claimants, pointed out that the Land Acquisition Officer had offered compensation at the rate of Rs.1.50 ps.per sq.mtr. for non-irrigated lands and Rs.2.25 ps. per sq.mtr. for irrigated lands which indicates that rise to the extent of 55% was given over the price of non-irrigated lands while determining the market value of the irrigated lands and, therefore, 50% rise given by the Reference Court over the price of non-irrigated lands while determining market value of irrigated lands should be maintained by the Court.

10. In our view the contention advanced by the learned advocate of the claimants cannot be upheld. In Kantaben Manibhai Amin & Anr. (supra), the Supreme Court has ruled that 25% excess compensation over and above market value of non-irrigated lands should be given while determining market value of irrigated lands. The determination of compensation for irrigated lands by the Reference Court is erroneous and contrary to the principles laid down by the Supreme Court. Therefore, it will have to be held that so far as irrigated lands are concerned, the claimants would be entitled to 25% excess compensation over and above market value of non-irrigated

lands. That means that the claimants would be entitled to compensation at the rate of Rs.1625.00 per Are so far as irrigated lands are concerned.

11. From the impugned award, it is evident that the Reference Court has not granted interest on the amount awarded under Section 23 (1-A) & 23(2) of the Act. In (i) Sunder V/s Union of India 2001 (3) G.L.H. 446 and (ii) Nagpur Improvement Trust V/s Vasant Rao & Ors. 2003 (1) G.L.H. 140, the Supreme Court has held that the claimants would be entitled to interest on the amount which is awarded under Section 23(1-A) & 23(2) of the Act. The Supreme Court in Shri Vijay Cotton & Oil Mills Ltd. V/s State of Gujarat (1991) 1 SCC 262, has ruled that costs under Section 27 and interest under Sections 28 & 34 are added to compensation amount to make it a consolidated award. What is emphasized therein is that costs and interest under the Act, if not awarded, by the lower court can always be awarded by High Court in any proceeding under the Act and to any party entitled to the same. Therefore, though the claimants have not filed cross appeals or objections, they will be entitled to relief of interest on the amount awarded under Section 23(1-A) and 23(2) of the Act in instant appeals which are filed by the State Government. Under the circumstances, necessary directions will have to be given in this regard to the appellants to pay interest on the amount which may be awarded to the claimants under Section 23(1-A) and 23(2) of the Act.

12. For the foregoing reasons, the appeals are partly allowed. It is held that the claimants in all appeals would be entitled to compensation at the rate of Rs.1625.00 per Are for their irrigated lands. It is also held that the claimants would be entitled to interest on the amount which may be awarded under Section 23(1-A) & 23(2) of the Act. Rest of the award is upheld. There shall be no orders as to costs. The office is directed to draw award in terms of this judgment.

(J.M.PANCHAL, J)

(SHARAD D DAVE, J)

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